IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1260 of 1999

in

SPECIAL CIVIL APPLICATIONNo 4065 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy : of the judgement?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? :

STATE OF GUJARAT
Versus
CHANDBIBI NAVABKHAN MEVATI

MR RC KODEKAR, AGP for Appellants
RULE SERVED for Respondent No. 1,16,17,18,19,20, 21,22,23,24,25,26,27,28,29,30
MR NAVIN K PAHWA for Respondent No. 15

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and

MR.JUSTICE J.M.PANCHAL

Date of decision: 11 /07/2000

C.A.V.JUDGMENT : (Per : Panchal, J.) :-

By means of filing this appeal under Clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated August 27, 1999, rendered by the learned Single Judge,in Special Civil Application No. 4065/99, by which order dated May 25, 1999 passed by the State Government under section 263(1) of the Gujarat Municipalities Act, 1963 dissolving Surendranagar-Dudhrej Nagarpalika is set aside.

2. Surendranagar- Dudhrej Nagarpalika is constituted under the provisions of the Gujarat Municipalities Act, 1963 ("the Act" for short). The term of present body of the Municipality was to expire on January 24, 2001. The Municipality has in all 42 members, who are duly elected. The State Government was of the opinin that the Municipality was not competent to perform and made deliberate default in the performance of the duties imposed on it by the Act and abused its powers. The State Government, therefore, served a notice dated January 12, 1999 on the Municipality calling upon it to show cause as to why the Municipality should not be dissolved under section 263 of the Act. The respondents no.1 to 28, who are councillors of the Municipality, apprehending dissolution of the Municipality, filed Special Civil Application No.586/99. Though in Special Civil Application No. 586/99 notice was ordered to be issued to the respondents, no interim relief was granted restraining the present appellants from dissolving the Municipality. The Municipality had submitted its reply to the show-cause notice as well as requested the State Government to treat Special Civil Application No. 586/99 as additional reply. During the pendency and hearing of Special Civil Application No. 586/99, the State Government passed an order dated May 25, 1999 dissolving Surendranagar-Dudhrej Nagarpalika. That order was challenged on various grounds including malafide by the respondents no.1 to 28 in Special Civil Application No. 4065/99.

3. The learned Single Judge held that though no interim relief was granted to respondents no.1 to 28 in Special Civil Application No. 586/99, dissolution of the Municipality during the pendency of the said petition amounted to overreaching the process of the Court and the said order was passed to abort the petition, which was

being considered by the High Court. The learned Single Judge noted that no parawise reply to the petition was filed on behalf of the respondents, nor anything was stated in the reply about the queries which had been raised by the Director of Municipalities. After looking to the facts of the case, the learned Single Judge deduced that there was neither deliberate default in the performance of duties by the Municipality, nor the Municipality had exceeded or abused the powers while performing duties, nor the Municipality had become incompetent to perform the duties and, therefore, the order dissolving the Municipality could not have been passed. In view of the above conclusions, the learned Single Judge has quashed the order dissolving the Municipality, which has given rise to the present appeal.

4. Mr. R.C.Kodekar, learned counsel for the appellants submitted that lapses which have been enumerated in the show-cause notice as well as order dissolving the Municipality indicate that the Municipality was not competent to perform the duties imposed on it by the Act and had deliberately made default in performance of the duties as well as exceeded and abused its powers and, therefore, the order dissolving the Municipality should not have been interfered with by the learned Single Judge. It was claimed that asno interim relief was granted in Special Civil Application No. 586/99, the appellants were free to consider the reply submitted by the Municipality and pass appropriate orders under the provisions of the Act and, therefore, the order passed by the State Government dissolving the Municipality could not have been treated as an attempt on the part of the appellants to overreach the process of Court. What was emphasised was that before passing the order dissolving the Municipality, the Municipality was given sufficient opportunity to explain its case and as the explanation offered by the Municipality was taken into consideration by the Government before passing the order, the petition should have been dismissed by the learned Single Judge. In support of his submissions, learned counsel placed reliance on the decision rendered in State of Gujarat vs. Savitaben Madhukar Makiwana & Ors, 1998(2) GLR 1593.

5. Mr. N.K.Pahwa, learned counsel forthe respondent submitted that serious allegations of malafide made on oath against the original respondents no.4 & 5 were never traversed, nor reply submitted by the Municipality to the show-cause notice was considered and, therefore, the learned Single Judge was justified in setting aside the

order dissolving the Municipality. It was claimed that the facts of the case do not indicate that the Municipality is not competent to perform the duties imposed on it by the Act or that the Municipality makes deliberate default in performance of the duties or has exceeded or abused its power and, therefore, the appeal should be dismissed.

6. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the original petition. It is relevant to notice that though Special Civil Application No. 586/99 was filed against apprehended action of dissolution of the Municipality, no interim direction was given by the High Court restraining the appellants from dissolving the Municipality. Under the circumstances, we find that the State Government was free to consider the reply submitted by the Municipality and pass appropriate orders in terms of section 263 of the Act. In absence of any interim direction, the order passed by the State Government dissolving the Municipality cannot be treated as an attempt on the part of the State Government to overreach the process of the Court and, therefore, the finding recorded by the learned Single Judge to the effect that by passing order dissolving the Municipality, the State Government has overreached the process of the Court cannot be sustained.

However, we find that in the petition, respondents no.1 to 28 had made serious allegations of malafide against respondents no.4 & 5 on oath. We may state that the Municipality is governed by members belonging to Congress(I) Party and though serious allegations of malafide were levelled against respondents no.4 & 5 by the original petitioners on oath, they remained untraversed, even though respondents no.4 & 5 were impleaded as parties to the petition and served with notices in the petition. Those respondents did not care to file reply to serious charges of arbitrariness, discrimination and malafides levelled against them. In the light of this admitted fact viz. the charges of malafides are not controverted by respondents no.4 & 5, the question has to be considered whether order dissolving the Municipality could have been passed by the State Government on the ground that the Municipality was not competent to perform the duties imposed on it by the Act or had made deliberate default in the peformance of duties or exceeded or abused its powers. In the impugned order, seven grounds are mentioned to justify dissolution of the Municipality. They are as under :-

(1) That in a drainage project, the Municipality had floated tender for pressure pipe lines of Class 15 instead of Class-10 and loss to the Municipality to the tune of Rs.45 to 50 lacs would have taken place, but for intervention of the Collector under section 258(1) of the Act.

(2) The agenda of General Meeting dated March 23, 1997, June 2, 1997 and September 11, 1997 were not served to all the members in advance and resolutions which were moved from the Chair were approved without prior circulation which defied democratic process and flouted the provisions of the Act.

(3) Layout plans of the construction which were presented before the Municipality and which were inconsistent with the building rules and bye-laws, were got approved through others, but not through Town Planning Committee, of which Chief Town Planner and Deputy Town Planner were members.

(4) Carelessness was shown by the Municipality in removing unauthorised encroachment and 14 complaints regarding encroachments were not attended to at all.

(5) No coercive action was taken for recovering the amount of tax due to the Municipality and income of the Municipality had steadily fallen.

(6) Before disposing of shops/offices situated in the Shopping Centre constructed by the Municipality, prior permission as required by section 65(2) of the Act was not obtained.

(7) No steps were taken by the Municipality to keep the Town clean and/or to remove the dirt and garbage from the Town.

It is relevant to notice that a detailed reply was given by the Municipality to the show-cause and the Municipality had requested the State Government to treat Special Civil Application No. 586/99 as its reply to the show-cause notice. However, order dissolving the Municipality does not indicate, in any manner, that either averments made in Special Civil Application No.586/99 were taken into consideration or the reply submitted by the Municipality was taken into consideration. The State Government in the impugned order has not assigned any reason as to why the explanation offered by the Municipality is not found to be acceptable. The State Government has mechanically rejected the explanation offered by the Municipality without cogent reasons. It is true that while exercising

powers under Article 226 of the Constitution, the High Court does not exercise appellate powers in such matters. However, we find that decision making process itself is vitiated, as the averments made in Special Civil Application No. 586/99 which was part of the reply of the Municipality, were never considered. Section 263(1) of the Act postulates hearing to be given to the Municipality before passing of dissolution order. Non-consideration of averments made in Special Civil Application No.586/99 would indicate that sufficient opportunity of hearing was not afforded to the Municipality before it was ordered to be dissolved. Thus, we find that the provisions of section 263(1) of the Act were not complied with by the State Government before passing the order dissolving the Municipality. Under the circumstances, opinion formed by the State Government that the Municipality was not competent to perform the duties imposed on it by the Act or that the Municipality made deliberate default in the performance of duties or exceeded or abused its powers, is vitiated. Having regard to the facts and circumstances of the case, we find that no error is committed by the learned Single Judge in setting aside the order by which Surendranagar-Dudhrej Nagarpalika was dissolved. The appeal, therefore, has no merits and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed with no orders as to costs.

(D.M.Dharmadhikari,C.J.)

(J.M.Panchal, J.)

(patel)